

Message Text

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INFO ALL EC CAPITALS
AMEMBASSY MOSCOW
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E.O. 11652: GDS
TAGS: PINT, FR
SUBJECT: 1978 ELECTIONS: THE POST-ELECTION CONSTITUTIO-
NAL ISSUE

SUMMARY. A MAJOR CONSTITUTIONAL ISSUE WILL BE RAISED AFTER MARCH 19 IF THE LEFT WINS THE ELECTIONS. IF THE PRESENT MAJORITY WINS, OF COURSE, OR IF THE LEFT IS UNABLE TO FORM A VIABLE GOVERNMENT, THE PRESIDENT MAY STILL BE FACED WITH SERIOUS POLITICAL PROBLEMS BUT NOT WITH THE SAME POTENTIAL CONSTITUTIONAL CONFLICT. THE BASIC ISSUE SPRINGS FROM A PRESIDENT AND PRIME MINISTER REPRESENTING PARTIES WHICH PROPOSE VERY DIFFERENT PROGRAMS, A PRESIDENT WHO HAS INHERITED POWERS FROM A CONSTITUTION CUSTOM-MADE FOR DE GAULLE BUT WHICH IS GENERALLY VAGUE ON THE ATTRIBUTION OF SPECIFIC POWERS, AND A LEFT WHICH WANTS TO REBALANCE THE EXECUTIVE AND PARLIAMENTARY ROLES ON THE BASIS OF ARTICLE 20. MOST OBSERVERS ADMIT THAT THIS SITUATION, UNPRECEDENTED IN THE FIFTH REPUBLIC, WILL BE DIFFICULT FOR THE PRESIDENT; HOW DIFFICULT DEPENDS ON THE DEGREE OF AN EVENTUAL LEFT VICTORY AND HOW FAR GISCARD TRIES TO ASSERT HIS POLITICAL ROLE. THE STAKES WILL VARY DEPENDING ON THE ISSUE, GISCARD PRESUMABLY EXPECTING TO HAVE MORE SAY IN THE FOREIGN AND DEFENSE FIELD THAN IN DOMESTIC POLICY. CURIOUSLY, THE IMPRECISION OF THE CONSTITUTION, WHICH IS OPEN TO DIFFERENT INTERPRETATIONS, COULD PAVE THE WAY TO AN UNEASY COHABITATION OR EVEN A RESTRAINED COLD WAR BETWEEN THE TWO MEN, RATHER THAN THE CONFRONTATION, CRISIS AND CHAOS PREDICTED BY SOME MEMBERS OF THE GOF. CONFIDENTIAL

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BASED ON RECENT STATEMENTS BY THE PRINCIPALS INVOLVED AND OTHER PRIVATE CONVERSATIONS, WE BELIEVE THERE ARE REASONABLY GOOD PROSPECTS THAT GISCARD AND A PRIME MINISTER OF THE LEFT WOULD AVOID THE WORST. END SUMMART.

1. BACKGROUND: THE QUESTION OF A LEFT PRIME MINISTER CO-HABITING WITH GISCARD AS PRESIDENT PROVOKED VGE TWO YEARS AGO TO STATE THAT HE INTENDED TO REMAIN AT THE ELYSEE UNTIL THE END OF HIS MANDATE (1981). HIS ANSWER CONTRIBUTED TO THE DEPARTURE OF PM CHIRAC, WHO INTERPRETED THE REMARK AS A PRESIDENTIAL OVERTURE TO THE SOCIALISTS TO GOVERN TOGETHER. THE QUESTION, A MORE REAL POSSIBILITY NOW, HAS BECOME AN ELECTION ISSUE, AT LEAST AMONG POLITICOS. CHIRAC WARNS THAT A CRISIS BETWEEN THE PM AND PRESIDENT WOULD BE INEVITABLE (BECAUSE EACH WAS ELECTED ON VERY DIFFERENT PROGRAMS), PM BARRE PREDICTS IT WILL NOT BE LONG BEFORE A PROFOUND DIVERGENCE OCCURS BETWEEN THE TWO MEN, WHILE LEFT LEADERS SAY ANY DIFFERENCES CAN BE WORKED OUT IF THOSE CONCERNED GIVE A REASONABLE READING TO THE CONSTITUTION.

2. THE CONSTITUTIONAL ISSUE: THE PROBLEM ARISES BECAU-

SE TWO OVERLAPPING SOVEREIGNTIES ARE INVOLVED. BOTH THE PRESIDENT AND THE NATIONAL ASSEMBLY ARE ELECTED BY UNIVERSAL SUFFRAGE, AND THE CONSTITUTION DOES NOT CLEARLY DEFINE THEIR RESPECTIVE ROLES. THE PRESIDENT'S ROLE (ARTICLE 5-19), AS INTERPRETED BY GISCARD, IS THAT OF PROTECTOR OF THE INSTITUTIONS OF THE FIFTH REPUBLIC AND THE INTERESTS OF THE STATE. THIS FORMULA BEGS THE QUESTION, FOR IT CAN BE INTERPRETED EITHER NARROWLY OR SO BROADLY AS TO INCLUDE PRACTICALLY EVERYTHING. A SECOND SOURCE OF AUTHORITY OF THE PRESIDENT IS THE TRADITION

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BUILT UP DURING 20 YEARS WHICH HAS CONCENTRATED MORE POWERS IN THAT OFFICE, PARTICULARLY IN THE FOREIGN AND DEFENSE FIELDS. THE LEFT'S POSITION ON THE DIVISION OF POWERS IS VERY SIMPLE. WE LEAVE ASIDE FOR THE MOMENT THE FOUR PAGES IN THE COMMON PROGRAM WHICH CALL FOR NUMEROUS CHANGES IN VARIOUS PROVISIONS IN THE CONSTITUTION. THE LEFT'S STARTING POINT IS A) SUPPORT FOR THE PRESENT CONSTITUTION OF THE FIFTH REPUBLIC, B) A STRICT INTERPRETATION OF ARTICLE 20 THAT "THE GOVERNMENT DETERMINES AND CONDUCTS THE POLICY OF THE NATION", C) A CONSEQUENT REDISTRIBUTION OF POWERS IN FAVOR OF THE PARLIAMENT (IN KEEPING WITH THE 1958 VERSION OF THE CONSTITUTION), AND D) WITHDRAWAL OF ARTICLE 16 EMERGENCY POWERS FROM THE PRESIDENT. THE LEFT DENIES THAT THE PRESIDENT RETAINS ANY "RESERVED" POWERS, NOT SPECIFIED IN THE CONSTITUTION, HOWEVER IT HAS NOT ALTOGETHER FORECLOSED A PRESIDENTIAL ROLE IN IMPORTANT AREAS SUCH AS FOREIGN (SEE PARIS 7283 AND PARIS 7839) AND DEFENSE POLICY. SUBSEQUENT STATEMENTS BY MITTERRAND RECOGNIZE MORE AFFIRMATIVELY THE PRESIDENT'S ROLE HERE, SAYING MOST RECENTLY THAT "ON ALL IMPORTANT PROBLEMS -- NOTABLY NATIONAL DEFENSE -- THE CHIEF OF STATE WILL BE HEARD BY WHOEVER RESPECTS HIS FUNCTION." FINALLY, THE LEFT NO LONGER CONTESTS THE ELECTION OF THE PRESIDENT BY UNIVERSAL SUFFRAGE, THOUGH IT DID IN 1962 WHEN IT CLAIMED THAT THE REVISION OF THE CONSTITUTION BY REFERENDUM WAS UNCONSTITUTIONAL; AND IT EVEN RECOGNIZES THAT SOME OF THE PRESIDENT'S POWERS SPRING FROM HIS POPULAR ELECTION.

3. THE POLITICAL ISSUE: ANY OSTENSIBLY LEGAL CONFRONTATION
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TION BETWEEN THE PRESIDENT AND PM, WHETHER OVER A MAJOR ISSUE (NATIONALIZATIONS, APPOINTING COMMUNIST MINISTERS) OR A MINOR POINT (APPOINTING OTHER SENIOR OFFICIALS),

WILL CLEARLY BE A POLITICAL TEST OF STRENGTH. AS WE WILL SEE, CONFRONTATION IS PROBABLY NOT IN THE INTEREST OF EITHER GISCARD OR MITTERRAND. HENCE, GISCARD'S INITIAL POSTURE, ONCE HE HAS CHOSEN HIS PM, WILL BE ONE OF WATCHFUL WAITING AND REACTING TO DECISIONS TAKEN BY THE LEFT RECENTLY RETURNED BY A MAJORITY OF THE MARCH VOTERS (WE ASSUME HERE THAT ANY ATTEMPTS TO NAME A NON-LEFT PM WILL BE VOTED DOWN BY A LEFT ASSEMBLY). WHAT WILL BE THE LEFT STRATEGEM?

4. WITH RESPECT TO THE PS, MUCH DEPENDS ON THE EXTENT OF THE LEFT'S VICTORY. AS ONE MITTERRAND AIDE SAID, "IF IT'S A NARROW VICTORY, THE RIGHT CAN ALWAYS FIND 5 OR 6 DEPUTIES TO BUY OFF" EITHER TO FORM ANOTHER MAJORITY OR AT LEAST AVOID A MOTION OF CENSURE. IN SUCH A CASE, THE QUESTION IS MOOT; THE LEFT WOULD HAVE BEEN UNSUCCESSFUL IN FORMING A GOVERNMENT OR WOULD FEEL SO MANY ADDITIONAL CONSTRAINTS AS TO LIMIT ITS ABILITY TO PRESS ITS VIEWS. IF, HOWEVER, THE VICTORY IS BIG, THE LEFT WOULD BE IN A POSITION TO PRESS TOWARD ITS INTERPRETATION OF ARTICLE 20. ONE OF THE FIRST ACTS SUCH A GOVERNMENT WOULD TAKE WOULD BE TO INVOKE ARTICLE 49 WHICH PROVIDES THAT THE PM "ENGAGE BEFORE THE NATIONAL ASSEMBLY THE RESPONSIBILITY OF THE GOVERNMENT" ON ITS PROGRAM OR ON A STATEMENT OF GENERAL POLICY. WHILE MUCH OF WHAT THE LEFT CONSIDERS THE MOST URGENT PARTS OF THE COMMON PROGRAM (MINIMUM WAGE AND SOCIAL BENEFITS) COULD IN THEORY BE ENACTED BY GOVERNMENT DECREE RATHER THAN LEGISLATION, A LEFT GOVERNMENT WOULD NOT BE INCLINED TO EXIST BY DECREE. ARTICLE 49 PUTS THE ISSUE SQUARELY BEFORE THE ASSEMBLY (AND THE PCF IF THERE ARE NO COMMUNIST MINISTERS), THUS FORCING AT LEAST TACIT ACCEPTANCE OF PS PROGRAMS AND ENGAGING PCF RESPONSIBILITY. THE PS INTENDS TO ESTABLISH

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ITS CREDENTIALS RIGHT OFF AND PROCEED AS RAPIDLY AS POSSIBLE DOWN THE LEGISLATIVE ROUTE (IN ANY CASE, NATIONALIZATIONS, LIBERTIES AND ADMINISTRATIVE CHANGES CALLED FOR IN THE COMMON PROGRAM REQUIRE NEW LEGISLATION). CONSTITUTIONAL REVISIONS ARE EXCLUDED FOR THE MOMENT SINCE THEY REQUIRE AN AFFIRMATIVE VOTE BY THE SENATE, WHERE THE LEFT WILL REMAIN A MINORITY.

5. GISCARD'S OPTIONS: THE PRESIDENT HAS NO EXPLICIT VETO POWER OVER LAWS PASSED BY THE PARLIAMENT. HE HAS THE ABILITY TO DELAY IMPLEMENTATION BY ASKING FOR ANOTHER READING IN PARLIAMENT OR A RULING BY THE CONSTITUTIONAL COUNCIL; OTHERWISE HE PROMULGATES THE LAWS WITHIN 15 DAYS." IN SUCH CIRCUMSTANCES, WE PRESUME (THE CASE NEVER HAVING ARRIVED TO DATE) THE PRESIDENT, FACED WITH

AN UNPALATABLE LAW, WOULD EITHER HAVE TO SWALLOW HIS
PRIDE AND HIS BELIEFS AND PUBLISH THE LAW OR REFUSE TO DO
SO AND CREATE A CONSTITUTIONAL CRISIS. THE CONSTITUTIONAL

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QUESTION COULD BE REFERRED TO THE CONSTITUTIONAL COUNCIL, PRESENTLY STACKED PREDOMINANTLY WITH GAULLISTS, BUT ITS DECISION IS NORMALLY EXPECTED WITHIN A 30-DAY PERIOD. MORE LIKELY, IN FRENCH TRADITION, A CRISIS OVER SOMETHING AS SERIOUS AS PROMULGATING LAWS WILL QUICKLY TRANSFER TO THE POLITICAL ARENA, AND HERE THE PRESIDENT HAS TWO MAJOR WEAPONS: DISSOLUTION OF THE ASSEMBLY AND A CALL FOR NEW PRESIDENTIAL ELECTIONS -- BOTH OF WHICH WOULD BE TEMPERED BY THE PARTICULAR ISSUE AT HAND AND THE POLITICAL ATMOSPHERE AT THE TIME.

6. IT WOULD BE WELL FIRST TO DISPOSE OF TWO OTHER PRESIDENTIAL POWERS, THE ARTICLE 11 CALL FOR A REFERENDUM AND ARTICLE 16 EMERGENCY POWERS. ARTICLE 11 IS AN EMPTY THREAT FOR THE PRESIDENT IN THESE CIRCUMSTANCES BECAUSE IT CAN ONLY BE EXERCISED AT THE INITIATIVE OF THE GOVERNMENT OR THE TWO HOUSES. IN ADDITION, REFERENDUMS HAVE GONE OUT OF FASHION IN FRANCE, THE LAST ONE ON EUROPE IN 1972 DREW A RECORD FOR DISINTEREST AND ABSTENTIONS BY THE ELECTORATE. ARTICLE 16, FOR ALL THE LEFT'S REMONSTRATIONS ABOUT ITS DANGERS FOR DEMOCRACY, IS NOT A REAL CONCERN. THE PS FOR ONE DOES NOT BELIEVE IT IS IN GISCARD'S CHARACTER TO RULE BY EMERGENCY DECREE, NOR THAT HE COULD CONVINCE THE PUBLIC THAT THE RESULTS OF DEMOCRATIC ELECTIONS WOULD JUSTIFY ITS USE. TO THE PRESIDENT'S TWO REMAINING WEAPONS, DISSOLUTION AND RESIGNATION, MIGHT BE ADDED A THIRD: PERSUASION AND APPEALING DIRECTLY TO PUBLIC OPINION (FOR THE PRESIDENT IS STILL HELD IN HIGH ESTEEM BY THE PUBLIC, INCLUDING MUCH OF THE LEFT).

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7. IN ANALYZING THESE DIFFERENT ALTERNATIVES, PS STRATEGISTS BELIEVE THE MOST LIKELY GISCARDIAN COURSE WOULD BE TO QUIETLY PROMULGATE LAWS FOR AN INDEFINITE PERIOD OF TIME (18 MONTHS, SAY SOME), IN THE CONVICTION THAT SERIOUS ECONOMIC PROBLEMS WILL RESULT, AND THEN CHOOSE THE MOST ADVANTAGEOUS MOMENT TO DISSOLVE PARLIAMENT. A READING OF GISCARD'S STATEMENTS OVER THE PAST MONTHS COULD LEAD ONE TO A DIFFER-

ENT CONCLUSION: THAT, IN ORDER TO PROTECT FRENCH INTERESTS AND INSTITUTIONS, HE WILL TRY TO PRESERVE AS MUCH OF HIS PRESIDENTIAL ROLE AS POSSIBLE, DELAY THE IMPLEMENTATION OF WHAT HE CONSIDERS DANGEROUS LEGISLATION, APPEAL TO THE PUBLIC, ETC. FINALLY, HIS OWN RESIGNATION, WHILE THE LEAST LIKELY COURSE OF ACTION, CANNOT BE EXCLUDED IF GISCARD INTERPRETS THE MARCH 19 LEGISLATIVE VOTE AND SUBSEQUENT LEFT GOVERNMENT PROGRAM AS A REPUDIATION OF HIS 4 YEARS IN OFFICE AND EVEN AS A PERSONAL HUMILIATION.

8. A PRACTICAL COMPROMISE? WE ARE INCLINED TO STEP BACK FROM THE MORE APOCALYPTIC PREDICTIONS WHICH HAVE BEEN ENCOURAGED BY THE HEATED CAMPAIGN DEBATE OF THE MOMENT. IT IS CERTAINLY TRUE THAT GISCARD WILL HAVE A VERY DIFFICULT TIME SWALLOWING EVEN A MODERATE VERSION OF THE COMMON PROGRAM AND ADJUSTING TO THE NEW TEAM OF LEFT LEADERS. THIS IS PROBABLY MOST TRUE IN THE ECONOMIC FIELD, WHERE HE WARNED ON MARCH 7 THAT THE ECONOMY "WOULD NOT RESIST FOR LONG THE HURRICANE OF PROMISES, EITHER WITH RESPECT TO PRICES OR TO ITS MONEY." BUT THERE ARE ALSO SIGNS THAT MUTUAL NECESSITY WILL IMPOSE A CO-HABITATION, ALTHOUGH AN UNEASY ONE, GRADUALLY LEADING TO A COMPROMISE BETWEEN THE PRESIDENT AND PM:

-- MITTERRAND'S STATEMENTS TO DATE HAVE BEEN RESTRAINED. WHILE HOLDING TO A STRICT INTERPRETATION OF ARTICLE 20, HE ALSO APPEALS REPEATEDLY TO WISDOM AND REASON WHICH MUST BE EXERCISED BY THE PM AND PRESIDENT IN THE UNPRECEDENTED PERIOD AFTER MARCH. MITTERRAND WILL HAVE ENOUGH MORE URGENT PROBLEMS TO RESOLVE (THE KEY RELATIONSHIP WITH THE PCF, FORMING A GOVERNMENT, INTRODUCING HIS LEGISLATIVE PROGRAM, ETC.) TO WANT TO AVOID A CONFRONTATION WITH THE PRESIDENT. IN MORE MACCHIAVELIAN TERMS, IT WOULD BE IN MITTERRAND'S INTEREST TO PUT OFF ANY SUCH CONFRONTATION UNTIL HE HAS HAD THE TIME TO CONSOLIDATE HIS POWER.

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-- GISCARD HAS BEEN SIMILARLY RESTRAINED DURING THE CAMPAIGN PERIOD. HIS REFERENCES TO "THE RIGHT CHOICE" AT VASSY AND VERDUN-SUR-LE-DOUBS WERE INDIRECT (ALTHOUGH UNMISTAKABLE), IN AN EFFORT TO PRESERVE HIS POSITION ABOVE PARTY POLITICS AND HIS OPTIONS SHOULD THE WRONG SIDE WIN. GISCARD HAS NEVER BELIEVED IN THE DURABILITY TO WISDOM AND REASON WHICH MUST BE EXERCISED BY THE PM AND PRESIDENT IN THE UNPRECEDENTED PERIOD AFTER MARCH. MITTERRAND WILL HAVE ENOUGH MORE URGENT PROBLEMS TO RESOLVE (THE KEY RELATIONSHIP WITH THE PCF, FORMING A GOVERNMENT, INTRODUCING HIS LEGISLATIVE PROGRAM, ETC.) TO WANT TO AVOID A CONFRONTATION WITH THE PRESIDENT. IN MORE MACCHIAVELIAN TERMS, IT WOULD BE IN MITTERRAND'S INTEREST TO PUT OFF ANY SUCH CONFRONTATION UNTIL HE HAS HAD THE TIME TO CONSOLIDATE HIS POWER.

-- GISCARD HAS BEEN SIMILARLY RESTRAINED DURING THE CAMPAIGN PERIOD. HIS REFERENCES TO "THE RIGHT CHOICE" AT VASSY AND VERDUN-SUR-LE-DOUBS WERE INDIRECT (ALTHOUGH UNMISTAKABLE), IN AN EFFORT TO PRESERVE HIS POSITION ABOVE PARTY POLITICS AND HIS OPTIONS SHOULD THE WRONG SIDE WIN. GISCARD HAS NEVER BELIEVED IN THE DURABILITY

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LITY OF A PS/PCF GOVERNMENT, IF ONE COULD
EVEN BE FORMED, AND IS AWAITING BOTH THE
SPLINTERING OF THE PS AFTER THE ELECTIONS
AND THE CHANCE TO COOPT ENOUGH
RENEGADES FROM THE LEFT TO MOVE ONE BIG
STEP FURTHER DOWN THE SOCIAL DEMOCRATIC,
CENTER/LEFT ROAD.

-- CENTRAL TO THE STRATEGY OF THE TWO MEN IS THE
PROSPECT OF THE 1981 PRESIDENTIAL ELECTION.
BOTH ARE ALREADY UNDECLARED CANDIDATES. BOTH
WILL ACT IN SUCH A WAY AS TO AVOID ANY MAJOR
MISTAKES IN MOVING TOWARD THAT DATE, AND THIS
CONCERN WILL DICTATE CAUTION IN HANDLING THE
CONSTITUTIONAL QUESTION. EACH, KNOWING HIS
OWN MANEUVERABILITY IS LIMITED, MAY NOT BE
ABLE TO DO MORE THAN TRY TO PUT THE OTHER IN
AN IMPOSSIBLE POSITION AND WIN IN 1981 OR SOO-
NER BY DEFAULT. MITTERRAND WILL INTRODUCE A
HEALTHY DOSE OF COMMON PROGRAM LEGISLATION
WHICH WOULD PROBABLY FORCE THE PRESIDENT TO
PROMULGATE OR REJECT THE POPULAR WILL.
GISCARD WILL PROBABLY PREFER TO WAIT FOR
THE LEFT TO HAVE DUG ITSELF INTO ECONOMIC
TROUBLE DEEP ENOUGH TO JUSTIFY NEW ELECTIONS.
THE
IMPLICATION OF SUCH POSITIONS IS THAT EACH IS
AWARE OF THE DANGERS OF OVERPLAYING HIS HAND.
THE SAME AWARENESS COULD ALSO PROVIDE ENOUGH
RESTRAINT TO ALLOW EACH TO OBTAIN HIS MINIMUM
GOALS.

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-- IF AS MOST OBSERVERS ASSUME, MITTERRAND HAS
HIS EYE FIXED ON THE ELYSEE, HE WOULD DO WELL
TO THINK OF HIS OWN FUTURE AND NOT DETRACT TOO
MUCH FROM THE POWERS OF THAT OFFICE.
-- FINALLY, THE VAGUENESS OF THE CONSTITUTION
PROVIDES A LEGAL CONTEXT WHICH COULD PERMIT A
CERTAIN AMOUNT OF READJUSTMENT OF POWERS FROM
THE PRESIDENCY TO THE PARLIAMENT WITHOUT
STRAINING ITS INTERPRETATION TO THE BREAKING
POINT. OBVIOUSLY, THE REALIZATION OF SUCH A
COURSE OF ACTION WILL DEPEND ON THE POLITICAL
WILLS OF GISCARD AND MITTERRAND AND THEIR DE-
SIRE AND ABILITY TO COMPROMISE. BUT, AT LEAST
THE OMISSIONS AND VAGARIES OF THE CONSTITUTION
GIVE THEM THIS ALTERNATIVE, IF THE HEART IS

WILLING.
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